**TESTIMONY OF DONALD ARNOLD, CHAIRMAN,
SCOTTS VALLEY BAND OF POMO INDIANS,
BEFORE THE HOUSE RESOURCES COMMITTEE**

April 5, 2006

Introduction

Honorable Chairman Pombo and members of the Committee, my name is Don Arnold and I am the Chairman of the Scotts Valley Band of Pomo Indians. Thank you for the opportunity to speak in front of you today on such an important issue.

Scotts Valley is a small landless Tribe in California that has an application with the Department of Interior to have land placed into trust as a restored tribe for gaming purposes. To date, the Tribe has expended a considerable amount of time and resources in order to comply with the federal fee to trust and restored lands applications process. I hope that I can provide some valuable information about the unique history and needs of California Tribes as well as update you as to where we are in our project and why we are concerned with the proposed legislation. We also would like to specifically speak to the issue of grandfathering and why Scotts Valley and other tribes should not have the rules changed in the seventh inning of the game.

Scotts Valley History

The Scotts Valley Band of Pomo Indians of California is a federally recognized Indian tribe, which has absolutely no trust land base. The Tribe's status as a federally-recognized Indian tribe was illegally terminated in 1965 under the California Rancheria Termination Act, and restored in 1992 pursuant to a judgment of the Federal District Court for the Northern District of California. The Judgment, however, specifically precludes the Tribe from re-establishing our former Rancheria.

As a result of the Federal Government's termination and relocation policies throughout the 20th century, the vast majority of tribal members were relocated to the San Francisco Bay area, and, in 2000, the Bureau of Indian Affairs designated Contra Costa County, California as the Scotts Valley Band of Pomo Indians "service population area." Because a large percentage of tribal members reside in and around the County and the County has been designated as the Tribe's service population area, the Tribal Council has determined to restore the Tribe's trust land base in the County, and to fully establish the Tribal Government and Tribal community in Contra Costa County. The Property is located in the extreme western end of the County close to the sites of historic Pomo villages and trails and the territory the Pomo ceded to the United States in the 19th century. The Property is thus the closest part of the Tribe's present day service population area to historic Pomo territory. As a result, the Tribal Council has determined that the development and operation of a gaming facility on the Property is an important Tribal Government project designed to improve the economic conditions of the Tribe and its members, increase tribal revenues, enhance the Tribe's economic self-sufficiency and promote a strong Tribal Government capable of meeting the social, economic, educational, cultural and health needs of the tribal members. Accordingly, the Tribe has requested that the Secretary of the Interior acquire title to six (6) parcels of real property totaling approximately 29.87 acres located within an unincorporated area of the County in trust for the benefit of the Tribe.

Application for Land Into Trust

After much time and resources, the Scotts Valley Tribe submitted an application under 25 CFR 151 on January 25, 2005 This application is an extensive compilation of both required and submitted documents filling numerous binders that includes a narrative addressing all requirements within 151 such as need, authority, impacts on the State and Political Subdivisions jurisdictional issues and title requirements.

In addition, adetailed Environmental Impact Statement (EIS) was developed which identifies a range of measures necessary to mitigate significant impacts our project will have on the local community.Not only has the Tribe publicly agreed to mitigate those impacts, but also has offered the County in which our restored trust land base would be located a limited waiver of sovereign immunity in order to make fully enforceable the terms of a Tribal-County agreement regarding the mitigation of impacts to the County.

The Tribe also is currently in negotiations with the City of Richmond to develop an MSA that addresses the mitigation of the impacts to the City of our proposed project. Quite simply, the Tribe wants to be good neighbors of the community in which our restored trust land base is located, and continuously reach out to the community to ensure that happens.

Since Congress included the “restored lands exception” when it enacted IGRA, it is clear that Congress knew and understood the plight of landless illegally terminated tribes, such as Scotts Valley. Congress did not give landless, illegally terminated tribes a free pass. Instead it created a rigorous mechanism for a landless, illegally terminated tribe, like Scotts Valley, to restore its trust land base and operate a gaming facility as a means of promoting tribal economic development, self-sufficiency and a strong tribal government. Scotts Valley is following this mechanism; the only mechanism which can provide our Tribe assurances of its sovereign survival.

Concerns with H.R. 4893

In 1988, Congress saw Indian gaming as an appropriate expression of tribal sovereignty and, accordingly, Congress enacted IGRA to protect and regulate that activity. It is clear, however, that, with certain exceptions, Congress intended to limit Indian gaming to Indian lands that existed on the date of enactment (October 17, 1988).

The problem was that not all tribes held tribal lands in 1988. Congress very specifically intended to assist such disadvantaged tribes by providing that, when they finally obtained land, their land would be treated as if it effectively had been in trust since before October 17, 1988. In other the words, Congress provided the restored lands exception of Section 20 (b) (1)(B)(iii) of IGRA so that eligible tribes such as Scotts Valley could be placed closer to the position they would have been in had the Tribe been restored and held lands in trust prior to1988. By so doing, Congress provided a mechanism by which newly restored tribes would be on a more level playing field with the tribes that were lucky enough to have been restored and had a land base on the date of IGRA's enactment. Congress knew that locking restored landless tribes out of the economic development opportunities made available by IGRA would do an incredible injustice to those tribes.

The purpose and intent of IGRA's restored lands provision is informed by the opinions of the federal courts that have considered this issue. In 2003, in a case involving a California tribe, the D.C. Circuit (in an opinion joined in by now Chief Justice Roberts) explained that the restored lands and initial reservations exceptions "serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones." City of Roseville u Norton; 348 F.3d 1020, 1030 (D.C. Cir. 2003). In 2002, in an opinion involving a Michigan tribe that was later affirmed by the Sixth Circuit, the District Court said nearly the same thing, saying that the term "restoration maybe read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." Grand Traverse Band of Ottawa and Chippewa Indians v. U.S Attorney for the Western District of Michigan, 198 F. Supp. 2d, 920, 935 (W D. Mich. 2002), aff'd 369 F.3d 960 (6th Cir. 2004) (referring to the factual circumstances, location, and temporal connection requirements that courts have imposed). The restored lands provision "compensates the Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim." City of Roseville, at 1029.

Only rarely does Congress provide the Secretary with special authority or direction to acquire trust land for a particular restored tribe. Therefore, newly restored tribes like Scotts Valley must rely on the general discretionary land acquisition authority given to the Secretary pursuant to Section 5 of the Indian Reorganization Act. (25 U.S.C. 465) As a consequence, landless restored tribes must submit to Interior's usual process for reviewing fee-to- trust applications, including complying with the requirements of Interior's fee-to-trust regulations (25 C.F.R Part 151).

H.R. 4893 would amend Section 20 to impose on newly recognized, newly restored and landless tribes an extensive laundry list of new requirements before those tribes could obtain trust land for gaming. Such comprehensive requirements have never been imposed on tribes with reservations in existence in 1988.

Indeed, on its face, H.R. 4893 appears to conflict with Congress' own policy direction to the federal agencies that they may not promulgate regulations or make any determination that "classifies, enhances or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes."

Section 20 is working as Congress intended. The Section 20 exceptions were intended to place tribes that were either unrecognized or landless in 1988 (Scotts Valley was both) on an equal footing with recognized tribes that had established trust land bases. The exceptions were not intended for recognized tribes with established land bases to improve their competitive environment, and therefore these tribes should not be attempting to use the exceptions for such purposes.

Grandfathering Tribes already in the process

Scotts Valley is a landless illegally terminated/restored tribe that is following the federally established procedures for taking land into trust for gaming purposes, and it is truly hurtful when the illegal termination of our Tribe and the relocation of our people are ignored and we are accused of "off reservation shopping." We are not "reservation shopping", instead we are following the very vigorous requirements the Congress established for restored tribes to restore their trust land base. The tens of thousands of pages included in the Tribe's trust application will show that the Tribe has both a strong historic connection to our proposed restored trust land and an even stronger modern day connection to that same proposed trust land.

Our tribe, as it always has, will tenaciously move forward in its fight for its survival, this time by following the federal procedures set forth for establishing a restored land i.e. pursuant to the provisions and case law governing Section 20(b)(1)(b)(iii) of IGRA and 25 C.F.R 151. This section provides adequate safeguards for tribal, state and local governments, and should not be changed.

There are considerable provisions under current law for public input into the Tribe's restored lands application. In addition to the public consultation and comment requirements built into the fee to trust process, there are a significant number of opportunities for public participation required by the National Environmental Policy Act ("NEPA"). The Department of the Interior has made clear in its recently revised guidelines for gaming acquisitions that most tribal casino projects will require preparation of an EIS to assess a wide range of potential impacts, including ecological, social, economic, cultural, historical, aesthetic, and health impacts. The Scotts Valley project is no exception.

The enormous amount of public opinion that is made a part of the NEPA and EIS processes is perhaps best demonstrated by walking through the extensive process in which Scotts Valley has been engaged:

- On July 20, 2004 the Bureau of Indian Affairs (BIA) published a notice of intent to prepare an EIS in the Federal Register describing Scotts Valley's proposed project, explaining the NEPA process, announcing a scoping meeting, and soliciting written comments on the scope and implementation of the proposed project. Public notices announcing the proposed project and the scoping meeting also were published in local papers. The scoping process was intended to gather information regarding interested parties and the range of issues that would be addressed in the EIS.

- The BIA held the public scoping meeting on August 4, 2004 in Richmond, California, and received comment letters during the scoping process. In December 2004 the BIA issued a scoping report describing the NEPA process, identifying cooperating agencies, explaining the proposed action and alternatives, and summarizing the issues identified during the scoping process.

- The BIA then prepared a preliminary draft EIS, which was circulated to the cooperating agencies for comment. Cooperating agencies for the Scotts Valley project included the County of Contra Costa, California, the City of Richmond, California, the California State Department of Transportation and the Environmental Protection Agency.

- Based on the comments received from the cooperating agencies, the BIA then prepared a draft environmental impact statement which was released for public comment on February 17, 2006. The BIA also held a public meeting in Richmond, CA on March 15, 2006 after the draft EIS had been made available to the public. At that meeting, several members of the community commented on the draft EIS; many of them positively.

- All the comments on the draft EIS, whether received in writing or through the public meeting, are being considered and addressed in the final EIS. The information included within that final EIS will be

considered by the Secretary while he/she determines whether or not to take the Scotts Valley parcel into trust. Therefore, the views of local elected officials, local citizens, and even the card rooms will be available to the Secretary for consideration before he/she makes a decision as to whether to take this land in trust for Scotts Valley.

- Finally, after the Secretary of the Interior has considered all the public comments, including information about impacts and mitigation, if he/she does decide to acquire trust title to the land, Interior's regulations provide the public with a very clear and very unambiguous opportunity to challenge the Secretary's decision in federal court before he/she implements that decision. 25 CFR 151.12(b) requires the Secretary to give the public at least 30 days notice of his/her decision to take land into trust before he/she will actually take the action to acquire trust title. Accordingly, if the public ultimately is not satisfied that its concerns have been addressed through either the fee to trust, the NEPA or EIS processes, it can exercise all available remedies at its disposal to prevent the Secretary from taking the land into trust.

In summary, I am here today to advocate among other things for the insertion of “grandfathering language” in HR 4893 that protects those illegally terminated landless tribes, who like Scotts Valley have already gone to considerable effort in their petitions to the federal government for a land base, on which to conduct gaming under the original provisions of IGRA. In conclusion, we hope that if passed, the Pombo Bill will add such “grandfathering language” and cut off dates to its final form before enactment to protect the Tribes who have followed the process and been engaged with time and resources.

Thank you for your attention to this testimony.

Respectfully,

Donald Arnold
Tribal Chairman
Scotts Valley Band of Pomo Indians
See 25 U.S.C. § 476(f).